

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
CC:PSI:02
PLR-120485-11

Date:
June 24, 2011

Legend

X =

State =

D1 =

D2 =

Dear :

This letter responds to a letter dated May 2, 2011, and subsequent correspondence, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 301.7701-3 to be treated as a corporation for federal tax purposes, and relief to file a late S corporation election under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was formed on D1 as a limited liability company under the laws of State. X intended to elect to be treated as an association taxable as a corporation and to elect to be treated as an S corporation for federal tax purposes, with both elections effective D2. However, neither Form 8832, Entity Classification Election, nor Form 2553, Election by a Small Business Corporation, was timely filed for X.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301-7701-3(b)(2)(i) provides that, except for certain existing entities described in § 301-7701-3(b)(3), unless a domestic eligible entity elects otherwise, the

entity is (A) a partnership if it has two or more members; or (B) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b)(3) by filing Form 8832 with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed and no more than 12 months after the date the election is filed.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for the regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

Section 1362(a) provides that a small business corporation may make an election to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. Section 1362(b)(2) provides, in relevant part, that if an S election is made within the first two and one-half months of a corporation’s taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Under § 1362(b)(3), an S election made after the first two and one-half months of a corporation’s taxable year, results in the corporation not being treated as an S corporation until the taxable year following the year in which the S election is filed.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the

election, then the Secretary may treat the election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Based solely on the facts submitted and representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. Accordingly, X is granted an extension of time of one-hundred twenty (120) days from the date of this letter to elect to be treated as an association taxable as a corporation for federal tax purposes effective D2. The election should be made by filing a properly executed Form 8832 with the appropriate service center. A copy of this letter should be attached to the election.

In addition, we conclude that X has established reasonable cause for failing to timely make an election to be an S corporation and, thus, is eligible for relief under § 1362(b)(5). Provided that X otherwise qualifies as an S corporation, we conclude that X will be recognized as an S corporation effective D2, if X files a completed Form 2553 effective D2 with the appropriate service center within one-hundred and twenty (120) days from the date of this letter. A copy of this letter should be attached to the election.

Except as expressly set forth herein, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,
Associate Chief Counsel
(Passthroughs & Special Industries)

Bradford R. Poston
Senior Counsel, Branch 2
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes